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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-third session
Agenda item 10 (a)

# THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

## QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Secretary-General containing information submitted by Governments pursuant to Sub-Commission resolution 7 (XXVII)

Addendum

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GE.91-12666/3540B

BURUNDI

[18 May 1991]
[Original: French]

1. The right not to be subjected to arrest or detention arbitrarily

Articles 4, 6, 27 and 28 of the Code of Penal Procedure set out the circumstances in which a person may be arrested or detained. Anyone ordering an arrest when the conditions stipulated in the Code of Penal Procedure have not been met would be guilty of the offence of arbitrary arrest as provided for and punishable under article 171 of the Penal Code.

Twice a week the government prosecutors carry out a check of police cells; they also conduct a monthly inspection of prisons in order to prevent cases of arbitrary arrest.

2. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment

Currently, the judicial and police authorities in Burundi deal strictly and severely with those responsible when cases of torture are established or following a complaint as the result of an initiative on the part of the authorities.

3. Other forms of consideration due to all accused persons

The Government of the Third Republic attaches great importance to the protection of human rights. This is demonstrated by the Charter of National Unity adopted by referendum on 5 February 1991, the symposium on human rights organized under the auspices of UNESCO from 9 to 12 October 1989 and the seminar of heads of penal institutions from French-speaking countries held in Bujumbura from 24 to 28 September 1990. Burundi was represented at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in Havana, Cuba.

In all these forums the situation of accused persons was discussed, and specific recommendations were adopted concerning the treatment and resocialization of offenders, respect for and the dignity of detained persons, non-discriminatory treatment of offenders, expeditious criminal justice and respect for the rights of the defence. These measures currently enjoy respect on the part of the authorities.

PHILIPPINES

[2 August 1991]
[Original: English]

The Government transmits the text of the following provisions relating to detention.

THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES

Article III (Bill of Rights)

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Sec. 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Sec. 14 (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Sec. 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

Sec. 16. All persons shall have the right to a speedy disposition of their cases, before all judicial, quasi-judicial, or administrative bodies.

Sec. 17. No person shall be compelled to be a witness against himself.

Sec. 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Sec. 19 (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, u. less, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

REPUBLIC ACT No. 1083

AN ACT TO AMEND ARTICLE ONE HUNDRED AND TWENTY-FIVE OF ACT NUMBERED THIRTY EIGHT HUNDRED AND FIFTEEN OTHERWISE KNOWN AS THE REVISED PENAL CODE, AS AMENDED, BY EXTENDING THE PERIOD OF LEGAL DETENTION IN CERTAIN CASES.

SECTION 1: Article One hundred and twenty-five of Act Numbered Thirty-eight hundred and fifteen, otherwise known as the Revised Penal Code, as amended, is hereby further amended to read as follows:

"ART. 125. Delay in the delivery of detained persons to the proper judicial authorities. The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours for crimes or offenses punishable by light penalties, or their equivalent; nine hours for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

"In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request to communicate and confer at any time with his attorney or counsel."

SEC. 2. All acts, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repeated or amended accordingly.

SEC. 3 This Act shall take effect upon its approval.

Approved, 15 June 1954

[Article 125 of the Penal Code was subsequently revised.]

PRESIDENTIAL DECREE 1404

FURTHER AMENDING ARTICLE 125 OF THE REVISED PENAL CODE AS AMENDED

WHEREAS, the periods within which arrested persons shall be delivered to the judicial authorities as provided in Article 125 of the Revised Penal Code, as amended, are on occasions inadequate to enable the government to file within the said periods the criminal information against persons arrested for certain crimes against national security and public order.

Now, therefore, I, Ferdinand E. Marcos, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, and in the interest of national security as well as of public safety and order, do hereby decree and order as part of the law of the land the following amendment to Article 125 of the Revised Penal Code, as amended:

SEC. 1. Article 125 of the Revised Penal Code, as amended, is hereby further amended to read as follows:

"ART. 125. Delay in the delivery of detained persons. The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correction penalties, or their equivalent; and eighteen hours for crimes or offenses punishable by afflictive or capital penalties, or their equivalent. Provided, however, that the President may, in the interest of national security and public order, authorize by Executive Order longer periods, which in no case shall exceed 30 days, or for as long as the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery of persons arrested for crimes or offenses against public order as defined in Title III, Book II of this Code, namely: Articles 134, 136, 138, 139, 141, 142, 143, 144, 146 and 147, and for acts in violation of Republic Act No. 1700 as amended by Presidential Decree No. 885, taking into consideration the gravity of the offense or offenses, the number of persons arrested, the threat to national security or to public safety and order, and/or the occurrence of a public calamity or other emergency situation preventing the early investigation of the cases and the filing of the corresponding information before the civil courts.

"In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request to communicate and confer at any time with his attorney or counsel and to be visited by his immediate relatives".

SEC. 2: All acts, executive orders, proclamations, Presidential Decrees, General Orders, Letters of Instruction, rules and regulations, or parts thereof, inconsistent with the provisions of this decree are hereby repealed or modified accordingly... .

[Article 125 of the Penal Code was subsequently revised.]

EXECUTIVE ORDER No. 59

REPEALING PRESIDENTIAL DECREES Nos. 1404, 1836, 1877 and 1877-A

WHEREAS, the former President, through Presidential Decree No. 1404, empowered himself to authorize longer periods for the delivery of persons arrested for the crimes or offenses enumerated in the said decree;

WHEREAS, the former President, through Presidential Decree No. 1836, empowered himself to issue orders of arrest or commitment orders during a state of martial law or when the privilege of the writ of habeas corpus is suspended against persons whose arrest or detention was in his judgement, required by public safety and as a means to quell invasion, insurrection or rebellion or imminent danger thereof;

WHEREAS, under the said decree, arrested or detained persons could not be released until so ordered by the former President or his duly authorized representative;

WHEREAS, the former President, through Presidential Decree No. 1877, again empowered himself to issue preventive detention actions against persons ascertained to be participants in the commission of the crimes enumerated therein for the periods and under the conditions therein mentioned;

WHEREAS, under Presidential Decree No. 1877-A, the former President likewise authorized himself to issue preventive detention actions against persons who committed the crimes enumerated therein, in addition to those already mentioned in Presidential Decree No. 1877, and against those whose arrest and detention was, in his judgement, required by public safety as a means to repel or quell the alleged rebellion in the country;

WHEREAS, not only where the National Security Code which incorporated Presidential Decree No. 1404, and Proclamation Nos. 2045 and 2045-A on which Presidential Decree Nos. 1877 and 1877-A were based, repealed, but the authorization of longer periods for the delivery of detained persons under Presidential Decree No. 1404, the presidential order of arrest or commitment order under Presidential Decree No. 1836, and the preventive detention action under Presidential Decree No. 1877, as amended by Presidential Decree No. 1877-A, also undermine the rights and freedoms of the Filipino people and are therefore patently inconsistent with Proclamation No. 3 dated 25 March 1986;

WHEREAS, the incumbent President is mandated to give priority to measures to achieve the mandate of the people to make effective the guarantees of the rights and freedoms of the Filipino people, and provide remedies against violations thereof;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. Presidential Decree No. 1404, "FURTHER AMENDING ARTICLE 125 OF THE REVISED PENAL CODE, AS AMENDED," Presidential Decree No. 1836, "DEFINING THE CONDITIONS UNDER WHICH THE PRESIDENT MAY ISSUE ORDERS OF ARREST OR COMMITMENT ORDERS DURING MARTIAL LAW OR WHEN THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IS SUSPENDED" and Presidential Decree No. 1877, "PROVIDING FOR THE ISSUANCE OF A PREVENTIVE DETENTION ACTION AND FOR OTHER PURPOSES," as amended by Presidential Decree No. 1877-A, and the rules, regulations and instructions issued to implement the aforesaid decrees are hereby repealed.

SECTION 2. This Executive Order shall take effect immediately.

Done in the City of Manila, this 7th day of November, in the year of Our Lord, nineteen hundred and eighty-six.

(Sgd.) CORAZON C. AQUINO
President of the Philippines

By the President:

(Sgd.) JOKER P. ARROYO
Executive Secretary

EXECUTIVE ORDER No. 272

FURTHER AMENDING ARTICLE 125 OF THE REVISED PENAL CODE, AS AMENDED

WHEREAS, in the interest of public safety and order, it is imperative that a reasonable and sufficient period be given within which to conduct adequate and thorough investigation of persons detained for some legal grounds;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. Article one hundred twenty-five of Act Numbered Three Thousand Eight Hundred Fifteen (Act No. 3815) otherwise known as the Revised Penal Code, as amended, is hereby further amended to read as follows:

"Article 125. Delay in the delivery of detained persons to the proper judicial authorities. The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such persons to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent, and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel."

SEC. 2. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly.

SEC. 3. This Executive Order shall take effect thirty (30) days following its publication in the Official Gazette.

DONE in the City of Manila, this 25th day of July, in the year of Our Lord, nineteen hundred and eighty-seven.

(Signed) CORAZON C. AQUINO
President of the Philippines

By the President:

(Signed) JOKER P. ARROYO
Executive Secretary

Republic of the Philippines
DEPARTMENT OF JUSTICE
Manila

1 March 1989

DEPARTMENT CIRCULAR No. 5

TO: ALL PROVINCIAL/CITY FISCALS, THEIR ASSISTANTS AND STATE PROSECUTORS

SUBJECT: PRESCRIBING A UNIFORM PROCEDURE FOR THE DISPOSITION OF INQUEST CASES

Section 7, Rule 112 of the 1985 Rules on Criminal Procedure, as amended, provides:

"SEC. 7. When accused lawfully arrested without warrant.

When a person is lawfully arrested without a warrant for an offense cognizable by the Regional Trial Court the complaint or information may be filed by the offended party, peace officer or fiscal without a preliminary investigation having been first conducted, on the basis of the affidavit of the offended party or arresting officer or person.

However, before the filing of such complaint or information, the person arrested may ask for a preliminary investigation by a proper officer in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, with the assistance of a lawyer and in case of non-availability of a lawyer, a responsible person of his choice. Notwithstanding such waiver, he may apply for bail as provided in the corresponding rule and the investigation must be terminated within fifteen (15) days from its inception.

If the case has been filed in court without a preliminary investigation having been first conducted, the accused may within five (5) days from the time he learns of the filing of the information, ask for a preliminary investigation with the same right to adduce evidence in his favor in the manner prescribed in this Rule."

In the interest of a more effective administration of justice, and to ensure uniformity in the disposition of cases involving persons under arrest or detention as provided in the aforequoted Rule, the following rules and procedures are hereby prescribed:

1. COVERAGE

These rules shall apply to all cases involving persons arrested or detained without warrant.

2. INQUEST PROCEDURE OUTSIDE OFFICE HOURS

2.1 The complaint/referral documents, investigation report, statement of complainant and witnesses, and other supporting evidence forwarded by the law enforcement agency shall be received by the Inquest Fiscal/Prosecutor.

2.2 The Inquest Fiscal/Prosecutor determines first whether the matter is a proper inquest case, that is, the arrest was made in accordance with Section 5, paragraphs (a) and (b), Rule 113, of the 1985 Rules on Criminal Procedure, as amended.

2.3 If the Inquest Fiscal/Prosecutor finds that the case is not proper for inquest, he shall order the release of respondent or person arrested, note down the disposition on the referral document, prepare a brief memorandum indicating the reasons for the action, and forward the same, together with the records of the case, to the Office of the Provincial/City Fiscal for appropriate action.

2.4 If proper for inquest, and respondent or person arrested wants to avail himself of a preliminary investigation, he shall execute a waiver of the provisions of Article 125 of the Revised Penal Code in accordance with the second paragraph of section 7 of Rule 112 of the 1985 Rules of Criminal Procedure, as amended. The records of the case shall then be forwarded by the Inquest Fiscal/Prosecutor to the Office of the Provincial/City Fiscal for preliminary investigation. Notwithstanding such waiver, respondent may apply for bail. The preliminary investigation shall, however, be terminated within fifteen (15) days from its inception.

2.5 If the respondent/person arrested does not execute a waiver, the Inquest Fiscal/Prosecutor shall proceed with the inquest by examining the affidavit/sworn statement of complainant, witnesses and other supporting evidence presented.

2.6 If the Inquest Fiscal/Prosecutor finds a prima facie case, he shall recommend the filing of the corresponding complaint/information in court, indicating the offense committed and the amount of bail recommended, if bailable, and forward the records of the case to the Office of the Provincial/City Fiscal for appropriate action. The complaint/information may be filed by the Inquest Fiscal/Prosecutor himself or any other Assistant Fiscal/Prosecutor to whom the case may be assigned by the Provincial/City Fiscal. The information shall contain a certification by the filing fiscal that he is filing the same in accordance with Section 7, Rule 112, of the 1985 Rules on Criminal Procedure, as amended.

2.7 If the Inquest Fiscal/Prosecutor finds no prima facie case, he shall order the release of the respondent/person arrested, note down his disposition on the referral slip, prepare a brief memorandum indicating the reasons for the action, and forward the records of the case to the Office of the Provincial/City Fiscal for appropriate action. However, for offenses cognizable by the Regional Trial Court, the order of release shall be subject to the approval of the Provincial/City Fiscal. If the Provincial/City Fiscal

disapproves the order of release, the respondent shall remain under custody and the corresponding complaint/information shall be filed by the Provincial/City Fiscal or by any Assistant Fiscal/Prosecutor to whom the case may be assigned.

3. INQUEST PROCEDURE DURING OFFICE HOURS

3.1 Inquest cases referred by law enforcement agencies shall be filed and docketed in the Office of the Provincial/City Fiscal. For this purpose, a separate docket book for inquest cases shall be maintained.

3.2 The case shall then be assigned by the Provincial/City Fiscal to any Assistant Fiscal/Prosecutor for appropriate action.

3.3 The Assistant Fiscal/Prosecutor to whom the case is assigned shall follow the same procedure already outlined in the preceding section (Section 2) for inquest outside office hours, whenever applicable.

4. MISCELLANEOUS PROVISIONS

4.1 The Provincial/City Fiscal's Office concerned shall furnish the PC-INP Headquarters/Police Station of the names of Prosecutors/Assistant Fiscals assigned to inquest duties and their schedule of assignments, provided that if there is only one fiscal in the area, all inquest cases shall be referred to him for appropriate action.

4.2 Unless otherwise directed by the Provincial/City Fiscal, those assigned on inquest duty shall discharge their duties during the hours of their designated assignments and at the police stations/headquarters of the PC-INP only in order to expedite and facilitate the disposition of inquest cases.

4.3 The Inquest Fiscal's/Prosecutor's presence is necessary at the place where a dead body is found whenever there is reason to believe that the cause of death is other than natural, or when there is suspicion that the cause arose from the unlawful acts or omissions of other persons or from foul play. He should carefully observe and take note of all pertinent evidence in the area and/or cause an autopsy to be made.

4.4 Should any complaint referred to him for investigation be cognizable by the Sandiganbayan, he shall forthwith direct the referring officer to forward the same and the complete records to the Office of the Special Prosecutor of the Ombudsman for its consideration and appropriate action. However, if the Inquest Fiscal/Prosecutor is a Deputized Tanodbayan Prosecutor, and a respondent who is "under arrest" is brought to him, he may, in cases falling within the exclusive jurisdiction of regular courts (penalty does not exceed prison correctional or imprisonment for six years or a fine of P6,000.00), conduct an inquest investigation pursuant to Administrative Order No. IV of the Office of the Tanodbayan (Ombudsman), dated 6 April 1983, implementing Presidential Decree No. 1861 and other circulars that may be issued by the Ombudsman.

4.5 The Inquest Fiscal/Prosecutor shall insure the presence of the respondent who is under custody. However, the production of the person of respondent may be dispensed with if he is confined in a hospital or detained in a place under maximum security, or if the bringing of respondent to the Inquest Fiscal/Prosecutor will involve security risks, which fact must be reflected in the record.

4.6 The investigation shall be conducted informally and summarily.

4.7 In the appreciation of evidence for purposes of determining a prima facie case, as well as the nature of the offense committed, the following shall also be observed:

4.7.1 When the documents presented are not complete to establish a prima facie case and a further police investigation is necessary, the Inquest Fiscal/Prosecutor shall direct the law enforcement agency to submit the required evidence within the period prescribed under Article 125, Revised Penal Code, as amended, otherwise, he shall order the release of the respondent and direct the law enforcement agency concerned to file the case with the Office of the Provincial/City Fiscal for appropriate action.

4.7.2 Charges and counter-charges arising from the same incident shall, as far as practicable, be the subject of one or the same referral letter to avoid contradictory action or inconsistent position.

4.7.3 If the pieces of evidence gathered are perishable in nature, the Inquest Fiscal/Prosecutor shall require the taking of pictures of such evidence, duly certified to by the police custodian as accurately representing the evidence in his custody, and likewise attested by the respondent himself, before ordering the release of the items to the owner thereof. If the attestation by the respondent is not feasible or he has signified his objection thereto, the attestation by two witnesses will be sufficient for the purpose.

4.7.4 The items recovered must be physically checked and accounted for by the issuance of corresponding receipts.

4.7.5 Any recovered item must be properly deposited with the police evidence custodian and not with the police investigator.

4.7.6 Bail to be recommended must be based on the Bail Bond Guide (Ministry Circular No. 36, dated 1 September 1981), as amended by Ministry Circular No. 8, dated 29 April 1985, and Department Circular No. 10-A, dated 10 November 1987.

4.7.7 Items recovered must be stated in the information, and the names of available witnesses must be listed in the information.

5. EFFECTIVITY

This circular shall take effect immediately.

(Signed) SEDFREY A. ORDOÑEZ
Secretary of Justice

# THAILAND

[17 June 1991]
[Original: ENGLISH]

1. In any society characterized by a heterogeneous mix of races and religions, the respect for human rights is fundamental for ensuring social harmony. In Thailand, where people of different ethnic background and religious beliefs live harmoniously as one, the respect for and the observance of human rights have been and will continue to be held in high regard. Basic human rights such as the rights to life, liberty, ownership of property and religious practices have always been accorded to the people by successive Thai constitutions, and have been preserved for the benefit of everyone in society.

2. Persons subjected to detention or imprisonment in Thailand also enjoy a high degree of protection in terms of their human rights, and existing Thai laws and by-laws designed to protect such rights conform to international standards and have always been applied without discrimination.

3. Within the Thai legal system, the Thai Penal Code of 1956 and the Criminal Procedure Code of 1934 are the main legal instruments in which the rights of persons subjected to detention/imprisonment, including those recognized by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 7 (XXVII) of 20 August 1974, second preambular paragraph, are recognized and protected. These laws ensure that the basic rights of persons subjected to discrimination/imprisonment, such as the right not to be subjected to arbitrary detention, the right not to be subjected to torture, degrading treatment or excessive punishments, and the right to equal protection of the law, etc., are fully upheld in the administration of justice.

4. To ensure the proper respect for and the observance of the rights of persons subjected to detention/imprisonment by the bodies and officers responsible for executing the law, safeguards have also been incorporated into the regulations of the ministries concerned. Such safeguards include, *inter alia*, strict regulations pertaining to procedures of arrest and interrogation of suspects, as well as punishment through disciplinary sanctions of those who exercise power excessively.

5. A more detailed analysis of the Thai laws and regulations regarding the rights of persons subjected to detention/imprisonment in Thailand entitled "Informative report about the human rights of persons subjected to detention or imprisonment in Thailand", prepared by the Department of Public Prosecutions, Ministry of Interior of Thailand, is attached hereto.

6. The overall picture of human rights practices in Thailand is continuing to improve. In recent years, there has been a more widespread assertion of human rights in Thailand, brought about in part by an increasingly educated public which is becoming more conscious of the significance of human rights.

Another factor contributing to a greater respect for human rights in Thailand revolves around the ongoing institution-building process in both the public and private sectors as well as a growing recognition by the Thai people and government officials of their rights and responsibilities.

7. Progress made in the respect for human rights in Thailand can be attributed to the increased interest the Thai people have shown towards political affairs. Political parties in Thailand now have access to a wider and more intelligent political support base, enabling the legislature of Thailand to become more effective in checking and balancing the power of the administration. Officers responsible for executing the law are now more cautious when exercising their power under the law.

8. Progress in the field of journalism in Thailand, particularly the scope and depth of journalistic investigation and reporting, has resulted in the media acting as vanguards of human rights. Given the extensive freedom of the press in Thailand, the media have been keeping a close check on the activities and the exercise of power by the bodies responsible for executing the law.

9. Private and public institutions, non-governmental agencies and international organizations as well as human rights lawyers have also come to play a very large role in the struggle to preserve human rights in Thailand, and have on a number of occasions been able to bring to justice those law enforcement officers who abuse their powers.

10. Finally, the Royal Thai Police Department itself is undergoing a series of changes in order to improve on its activities relating to the administration of justice as well as its relationship with the people. In this connection, the Department is undertaking activities related to personnel development, aimed in part at instilling a better understanding of law enforcement responsibilities and greater respect for human rights on the part of law enforcement officers. For example, in 1987, the Department issued an order for all police officers to, inter alia, place more emphasis on the respect for the rights of persons subjected to detention/imprisonment during criminal investigation. Other ongoing improvements include the requirement for senior police officials to supervise investigations closely, a programme to establish a legal counsel assistance centre and, more importantly, a more rigorous enforcement of measures to eliminate abuse of power by police officials.

11. In light of the above, it may be concluded that the human rights of persons subjected to detention or imprisonment in Thailand, as well as other basic human rights, are at present receiving more attention from both the Thai people and the Thai Government.

## Annex

INFORMATIVE REPORT ABOUT THE HUMAN RIGHTS OF PERSONS SUBJECTED TO DETENTION OR IMPRISONMENT IN THAILAND

1. As a civil law country whose legal system is founded upon written law, Thailand has made the violation of laws a criminal offence and has conducted the cases relating therefrom in accordance with the legal process. In this regard, the Thai Penal Code of 1956 and the Criminal Procedure Code of 1934 are pre-eminent.* The conduct of cases in Thailand has always been firmly based on the principles of fact finding and evidence proving. No penalty is imposed upon an accused person on the basis of dubious evidence. In case of doubt, the benefit must be positively granted to the accused.

2. In criminal cases, the police officials who undertake the inquiry, the public prosecutors who review the case and exercise discretionary power whether to prosecute or not to prosecute the alleged offenders, and the judges who adjudicate the case all have an equal duty to maintain justice and safeguard the human rights of the alleged offenders or the accused. Not only do these officials face disciplinary sanction if they abuse their office, but may also be convicted with a severe punishment under the Thai Penal Code of 1956. Thus, very few, if any, authorities dare to step across the line and encroach on the human rights of the suspect and the accused.

3. As regard the protection of certain rights mentioned in resolution 7 (XXVII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the exact principle is also adopted within the Thai legal system as follows:

### 3.1 The right not to be subjected to arrest or detention arbitrarily

This right is protected by the Criminal Procedure Code of 1934, section 78, which absolutely forbids arrest without a warrant, except under exceptional circumstances such as when the suspect has committed a flagrant offence; or is found attempting to commit an offence; or there are reasonable grounds to suspect that such a person, after having committed an offence, is about to abscond. In this connection, another safeguard has been established under section 66 of the Code by means of restricting very narrowly the grounds upon which a warrant of arrest may be issued, such as when the alleged offender or the accused has no fixed place of residence, or his offence is punishable with imprisonment of three years and upwards, or when he fails to comply with a summons requiring him to appear, or is under reasonable suspicion of intending to abscond, or fails to provide a higher bond or security.

More significant, however, is section 90 of the Criminal Procedure Code of 1934 upon which the safeguard against arbitrary detention, confinement, or imprisonment has been directly founded. This section reads, "When it is

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* Translations from documents in the Thai language into English are unofficial.

alleged that a person has been kept in custody or detained contrary to law, or imprisoned contrary to the judgement of the court, the following persons shall apply by motion to the court for his release: (1) the aggrieved person; (2) his spouse, relative or any interested person; (3) the Public Prosecutor; (4) the governor of the jail or the chief jailer. On receipt of such application, the court shall summon the officials or persons who caused such custody, detention or imprisonment, to appear together. If satisfied that the custody or detention is contrary to law or the imprisonment is contrary to the judgement, the court shall order the release of such person."

3.2 The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment

In Thailand, no person shall be held criminally liable for any act committed by him unless at the time of its commission such act is an offence punishable by the law then in force, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at that time. This principle is observed under section 2 of the Penal Code of 1956 which indicates that "A person shall be criminally punished only when the act committed by him is provided to be an offence and the punishment is defined by the law in force at the time of the commission of such act, and the punishment to be inflicted upon the offender shall be that provided by the law."

In this connection, the punishments according to the Thai law under article 18 of the Penal Code, are:

1. Death

2. Imprisonment

3. Confinement

4. Fine

5. Forfeiture of property.

All these punishments are in line with those punishments adopted worldwide and are not considered as torture, or cruel, inhuman, or degrading treatment or punishment.

3.3 The right to be treated with humanity and with respect for the inherent dignity of the human person

Fully respecting the humanity and dignity of a person, Thailand has adopted various provisions in its legislation forbidding improper treatment of the suspect and the accused and at the same time giving, instead, some gentle and kind understanding. This can be eminently perceived, for instance, from the following provisions of the Criminal Procedure Code of 1934:

Section 86. No more restraint shall be applied to an arrested person than is necessary to prevent his escape.

Section 87. No arrested person shall be kept in custody longer than is necessary according to the circumstances of the case.

Section 246. Execution of imprisonment may be suspended until the cause of suspension has ceased in the following cases:

1. when the accused is insane;

2. when it is feared that the life of the accused will be endangered by imprisonment;

3. if the accused is seven months or more pregnant;

4. if the accused has given birth to a child and a period of one month has not yet elapsed.

Pending such suspension, the Court shall order an administrative or police official to arrange for keeping in custody of such person in a suitable place.

3.4 The right to equal protection of the law without any discrimination

In criminal proceedings, every alien has the same rights and protection as Thai citizens.

3.5 (e) The right to be informed of the reasons or grounds of the arrest or detention

This right is protected under the provisions of section 84 of the Criminal Procedure Code of 1934 which reads, in part:

> "Section 84. The official or private person making the arrest shall immediately take the person arrested to the office of the administrative or police official and, on arrival thereat, shall produce and read to him the warrant of arrest, if any, and shall notify him of the reason for the arrest..."

3.6 The right to be brought promptly before a court and to have a trial within a reasonable time

Protection of this right under Thai law is provided by establishing the time that the alleged offender can be kept in custody by the authorities for the purpose of investigation or at the pre-charge stage. In this context Section 87 of the Criminal Procedure Code of 1934 has set up certain time-limits during which the arrested person can be kept in custody according to the seriousness of the offence alleged as having been committed by such person. The time-limits vary from the extremely short period required to take a statement and to ascertain the identity and place of residence of the arrested person in the case of petty offences to a maximum of seven days for all other offences.

If it is necessary to keep the person under arrest longer than the above period, then a judicial warrant of detention must be obtained. The Court will

allow longer detention only when it is proved to be absolutely necessary and the extension of which must be in accordance with the period prescribed by the law which in no case shall be longer than 84 days.

If the offence is punishable by a term of imprisonment not exceeding three years or a fine of not more than 60,000 baht, the alleged offender must be prosecuted within 72 hours pursuant to the Act for Establishment of Kwaeng Court (Petty Court) and the criminal procedure in Kwaeng Court of 1956. However, in case of necessity requests to postpone the prosecution for a period of not longer than six days for each postponement and altogether not more than five times may be submitted to the court.

3.7 The right to communicate with legal counsel

To guarantee a just and fair trial is to provide the accused with access to legal counsel. However, this guarantee is hardly effective without the granting of communication between them.

Section 8 of the Criminal Procedure Code of 1934 reads, in part, as follows:

> "From the time of entry of the charge, the accused shall be entitled,
>
> 1. to appoint a counsel during the preliminary examination or trial before the Court of First Instance, the Appeal Court or the Supreme Court;
>
> 2. To have tête-a-tête talks with his counsel or would-be counsel;..."

Along with the above protection for the accused, the Penitentiary Act of 1936, in its section 33, takes a step further in granting the same right to prisoners by proclaiming that, "Subject to the rules laid down by the Director General, a prisoner shall be permitted to be visited or communicated with by outsiders, especially his counsel, under section 8 of the Criminal Procedure Code." Similarly, under the regulations of the Police Department, every police station must arrange a place for the detainee to meet privately with his counsel.

3.8 The right of the accused to be tried in his presence and to defend himself in person or through legal assistance of his own choosing

According to sections 172 and 172 bis of the Criminal Procedure Code, an accused is fully guaranteed the right to be tried in his presence except in some very special circumstances where the accused person who has a counsel is permitted by the Court to be absent or when the Court sees fit to conduct the trial in the absence of the accused. Nevertheless, no Court shall, in any case be bound by a trial conducted or evidence taken in absence of the accused person concerned except in the case where an accused person who has a counsel is permitted to be absent as mentioned above.

The accused is guaranteed the right to defend himself in person or through legal assistance of his own choosing by virtue of section 8 of the Criminal Procedure Code of 1934 which reads, in part, as follows:

"Section 8. From the time of entry of the charge, the accused shall be entitled:

1. to appoint a counsel during the preliminary examination or trial before the Court of First Instance, the Appeal Court, or the Supreme Court;..."

Even more, in the case of certain serious offences punishable with a maximum prison sentence of 10 years or more, or in the case of offences committed by a minor, the Court must inquire whether the accused has a counsel or not; if he has none and so requires, the Court must appoint one for him.

3.9 The right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him

The protection of this right in Thailand is recognized, not only implicitly in accordance with the general practice of full respect for the absolute right of the accused to defend himself, but also directly by virtue of section 174 of the Criminal Procedure Code of 1934, which reads, in part, as follows:

"Section 174. ... After the evidence for the prosection has been taken, the accused is entitled to open the case for the purpose of stating to the Court the case of the defence, ... The accused shall then adduce the evidence for the defence..."

3.10 The right of the accused to have free assistance of an interpreter if he cannot understand or speak the language used in the court

By virtue of section 13 of the Criminal Procedure Code of 1934, the inquiry, preliminary examination and trial must be conducted in Thai. However, if it is necessary to translate Thai into a foreign language or a foreign language into Thai, an interpreter, who shall take oath as a witness, shall be appointed by virtue of the same section. This means that the rights of an accused foreigner are also fully respected and observed.

3.11 The right of the accused not to be compelled to testify against himself or to confess his guilt

According to the criminal proceedings of Thailand, the suspect, as well as the accused, is recognized as having full competence to defend himself and nobody can force him to do or not to do anything contrary to this right. By virtue of sections 134 and 135 of the Criminal Procedure Code of 1934, a suspect is entitled to make or to refrain from making a statement related to the allegation or may remain silent while the investigating official is prohibited from making, or causing to be made, any deception, threat or promise to any suspect in order to induce him to make any particular statement about the allegation.

When the suspect is prosecuted and has been accused under Thai law, this absolute privilege follows him to the court. Thus, he is also entitled to

make any statement or to keep silent before the court, in accordance with section 172 of the Criminal Procedure Code of 1934 which reads in part as follows:

> "Section 172. ... When the prosecutor or his counsel and the accused are before the court, and after the court has been satisfied as to the identity of the accused, the charge shall be read out and explained to the accused and he shall then be asked whether or not he has committed the offence and what will be his defence. The statement made by the accused shall be written down. If the accused refuses to make a statement, this fact shall be written down in the memorandum and the trial shall then proceed."

3.12 The right to a fair and public hearing by an independent and impartial tribunal

Since Thailand regards the life, liberty and property of the people as absolute and fundamental human rights, the respect for and guarantee of the right to a fair and public hearing by an independent and impartial tribunal of the people is therefore not only observed but also fully protected.

Section 172 of the Criminal Procedure Code of 1934 specifies that, unless otherwise provided, the trial and the taking of evidence shall be conducted in open court and in the presence of the accused. It is generally accepted as a practice that the accused must be tried publicly save when it may be necessary, for reasons of public order, good morals, or secrets concerning national security, for the trial to be held behind closed doors by virtue of section 177 of the Code.

3.13 The right to be presumed innocent until proved guilty according to the law

The granting of the right to be presumed innocent until proved guilty according to the law to those who are subjected to allegation or prosecution of an offence appears in section 27 of the Constitution, which reads, "In all criminal cases, the accused or the defendant shall be presumed to be innocent. Before the passing of a final judgement convicting a person of having committed an offence, such person shall not be treated as a convict."

By virtue of this presumption, the court, in adjudicating cases, is thus bound carefully to examine and weigh all evidence before passing the judgement of conviction, and if any reasonable doubt exists as to whether or not the accused has committed the offence such doubt must be considered to the effect to give benefit to the accused. (Section 227 of the Criminal Procedure Code of 1934.)

3.14 The right not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed, nor to receive a heavier penalty than the one that was applicable at the time when the criminal offence was committed

This nulla poena sine leges principle is undoubtedly the essential doctrine upon which the Thai legal concept is founded, and has been adopted as

the general guideline to convict or not to convict a person according to section 2 of the Penal Code of 1956, which reads in part: "A person shall be criminally punished only when the act done by him is provided to be an offence and the punishment is defined by the law in force at the time of the commission of such act, and the punishment to be inflicted upon the offender shall be that provided by the law."

4. Apart from legal protection, safeguards have also been established to prevent the violation of human rights from the abuse of power or malpractice on the part of the authorities responsible for executing the law, in particular the police, the investigating official and the public prosecutor, whose power and functions are inevitably concerned with the arrest, the investigation and the prosecution of the alleged offender.

5. For the arrest and interrogation of the suspect, the Regulation of the Ministry of Interior on Criminal Proceedings 1980, amended by the second, the third and the fourth Regulation, has been established with the main objectives, as stated in its preamble, of ensuring justice and effectiveness in the investigation of the case by the investigating official and of guaranteeing the fundamental rights and liberty of the alleged offender. Although the preamble to the Regulation does not clearly state the intention to prevent abuse of power and malpractice by the authorities, the content of various clauses therein may be considered to have that effect. The illustrations of this interpretation are as follows:

(a) Clause 1, which provides to the effect that no warrant of arrest shall be made unless adequate evidence has been obtained in advance and approved by some competent authorities, can be considered as preventing arbitrary arrest and placing the issuance of warrants under a system of checks and control;

(b) Clause 5, which provides to the effect that when a request for provisional release is made the investigating official shall make an immediate determination and inform the applicant of the result within 24 hours, can be considered as a measure to counter delay and thereby prevent arbitrary encroachment upon the liberty of the suspect;

(c) Clause 6, which provides to the effect that no additional or other more severe offences than the one committed shall be alleged against the alleged offender, can be considered as a guarantee against malpractice by the authorities;

(d) Clause 7, which provides to the effect that the interrogation must be carried out in the form of a record of questions and answers and that the interrogating official shall not compose the statement or describe the incident himself, can be considered as a precaution against the improper obtaining of a statement from the alleged offender, thereby protecting his absolute right to self-defence;

(e) Clause 12, which provides to the effect that if the alleged offender lodges a complaint to the provincial governor regarding the interrogation the provincial governor shall investigate the incident or supervise the inquiry himself, can be considered as an effort to safeguard just and fair legal protection of the alleged offender.

6. On the part of the public prosecutor, the protection of human rights of detainees, which is included within the protection of the rights of the alleged offender and the accused, is reflected quite clearly in the Regulation on Criminal Proceeding of the Public Prosecutor of 1985. Under this regulation, the public prosecutor has to use proper and special care when dealing with these persons. According to Clause 5, the public prosecutor must always take account of the rights and liberty of the alleged offender and the accused. Thus, it is his duty to expedite every case, in particular where the alleged offender or the accused is under detention. In considering a request for provisional release, the public prosecutor must exert proper and reasonable discretion and avoid delay. Refusal of the request must be accompanied by clearly stated reasons which will be promptly communicated to the requester (clause 22 of the Regulation). If a complaint is lodged against the interrogation conducted by the interrogating official, the public prosecutor shall instruct that official to bring before him the witness and to question the witness, in order to provide justice and fairness in case-handling to all parties concerned (clause 49). The most significant manifestation of humane treatment, however, is the temporary suspension of a case when the alleged offender is unable to defend himself due to serious illness, insanity, or other similar causes. This can be done regardless of whether the order to prosecute has already been issued (clause 56).

7. The legislature pays no less attention than other groups to protecting the human rights of persons who are subjected to detention or imprisonment in Thailand. The Committee on Social Welfare and Sport of the House of Representatives has played an active role in promoting the human rights of persons subjected to detention or imprisonment in Thailand.

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